



Level 5, 1 Macarthur Street  
EAST MELBOURNE VIC 3002

03 7005 9772  
contact@betterreg.vic.gov.au  
betterregulation.vic.gov.au

D22/69393

Ms Marian Chapman  
Deputy Secretary and Chief Council, Integrity, Legal and Law Reform  
Department of Justice and Community Safety  
Level 26, 121 Exhibition St  
MELBOURNE VIC 3000

25 May 2022

Dear Ms Chapman,

**REGULATORY IMPACT ASSESSMENT FOR THE MAGISTRATES' COURT (FEES) REGULATIONS 2022 AND THE JURIES (FEES) REGULATIONS 2022**

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Assessment (RIS) for two sets of proposed regulations:

1. the Magistrates' Court (Fees) Regulations 2022, which specify fees charged to users of the Magistrates' Court; and
2. the Juries (Fees) Regulations 2022, which specify fees for requesting a civil matter to be heard by a jury.

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 25 May 2022 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

## Background

The proposed Regulations are intended to replace the Magistrates' Court (Fees) Regulations 2012 and the Juries (Fees) Regulations 2012, which both sunset in September 2022.

The first set of proposed Regulations relates to setting fees charged by the Magistrates' Court, which is the first level of the Victorian Court System and deals with most legal disputes in the state. The Court sits below the County Court and Supreme Court. The Court primarily hears less serious criminal matters and civil disputes of lower monetary value. Matters before the Court are heard and determined by a magistrate or judicial registrar, without assembling a jury. The Victorian Civil and Administrative Tribunal (VCAT) provides an alternative and less formal process for resolving legal disputes than the Courts.

The Court operates under the *Magistrates' Court Act 1989*. The Court's fee structure is set out in the current Regulations. Fees are charged primarily within the Court's civil jurisdiction. The Department explains that criminal proceedings generally do not incur fees as it is considered they provide a public good, rather than a service offered to any individual. Currently, the fees charged for civil matters aim to partially recover the Court's operating costs. As such, fees are charged for services provided by the Court in the course of proceedings such as filing a document or issuing an enforcement notice for a court order.

The Department explains that the approach of recovering part of the costs of proceedings through fees seeks to balance the role of government in providing an effective court system with the private benefits that civil proceedings confer by resolving disputes. Fees are billed to the party on whose behalf a service is provided. Where a fee is payable because of an order or direction initiated by the Court itself, the fee is payable by the party which commenced the proceeding. In the 2020/21 financial year, fees recovered \$11 million of the Court's total operating costs of \$247 million. Considering civil matters alone, fee revenue recovered 14 per cent of total operating costs of \$77 million. Since the Magistrates' Court fees were last reviewed in 2012, the County Court and Supreme Court have introduced three-tiered fee structures with a standard fee rate, a higher corporate rate and a reduced concession rate.

The second set of proposed Regulations relate to fees charged for requesting a civil matter to be tried by a jury. The role of the jury in these matters is to determine questions of fact and to apply the law, as stated by the judge. Jury trials are commonplace in all Australian jurisdictions for more serious criminal matters but have a more limited role in civil matters. In Victoria, jury trials are only available as an elective option in civil matters for tort and contract proceedings heard in the Supreme Court or County Court, with fees charged to the requesting party.

Payments to jurors are set by the Attorney General under Section 51 of the *Juries Act 2000*. The payment rates are communicated via a notice in the Victoria Government Gazette. The current payment rates were set in 2012 at \$40 per juror per day for the first six days of a trial, \$80 per day thereafter and \$159 a day if a trial goes beyond 12 months. The Juries Act also requires employers to make up any difference between these payments and what one of their employees would have received had they been available for work during jury service. The current fees aim to recover additional costs incurred by the Court from holding a jury trial.

### **Options and Impact Analysis**

In the RIS, the Department analyses three options for setting Magistrates' Court fees.

- **Option 1: Retain the current fee structure;**
- **Option 2: Change the fee structure and increase fee revenue.** Under this option, a three-tiered fee structure would be introduced. The new fee structure would include a standard fee (generally set at the current fee or lower), a corporate fee set at double the standard fee and a concession fee set at half the standard fee. Existing fee exemptions would continue to apply, with additional fee waivers also introduced. This proposed fee structure is modelled on the structure used in other Victorian courts and is estimated to increase total fee revenue by 40 per cent.; and
- **Option 3: Retain the current fee structure and increase fee revenue.** This option would retain the current fee structure, but all fees would be increased by 40 per cent, increasing fee revenue by the same amount as Option 2.

These options are analysed using a multi-criteria analysis (MCA). Each option is assessed against a base case where the current Regulations would expire and the Court would not charge fees. The criteria and weightings in the MCA are:

- **Access to Justice (40 per cent):** the extent to which the fees represent a significant barrier to a person accessing the court system;
- **Support and enable court operations (30 per cent):** the extent to which an option sends an appropriate price signal to potential litigants and incentivises users to resolve matters in the appropriate court;
- **Fairness of fees between court users (20 per cent):** the extent to which an option acknowledges that those with a greater ability to pay a fee should contribute more to the costs of a service than those with less ability to pay; and
- **Ease to understand and administer fees (10 per cent):** the extent to which the fees proposed in an option are easy to communicate, calculate and collect.

The Department explains that Option 2 is its preferred option. It would:

- **Better support access to justice** than Options 1 and 3 as it would introduce a concession fee, which would be automatically available to Commonwealth Health Care Card holders. Fee waivers would be available where paying fees would cause financial hardship;
- **Strongly support court operations** because introducing a higher fee for corporate users would increase the Court's overall level of cost recovery. Feedback from other courts indicated that the three-tiered fee structure is working effectively. Introducing consistent fee categories across Victorian courts will also promote the appropriate use of resources across the court system. Option 2 significantly outperformed other options against this criterion;
- **Promote fairness between court users** by introducing a differentiated fee structure, which increases fees for users with a greater ability to pay and reduces fees for users less able to pay. Option 2 performed slightly better than the alternative options against this criterion; and
- **Be simpler to administer and understand** because Option 2 would mean the Court's fee structure would be consistent with other Victorian courts and restructuring fees under this option would involve drafting improvements to increase clarity.

For the second set of proposed Regulations, the Department analyses three options to set fees for jury trials in civil matters. It explains that the largest component of additional costs to courts for jury trials in civil matters is payment to jurors. As noted above, payment rates are set by the Attorney-General in a gazetted notice and do not automatically increase over time. If fees are set in fee units, then fees (and revenue) will automatically increase over time. The three options analysed are:

1. **To set fees in fee units so that fee revenue matches the current costs of juries** (in 2022);
2. **To set fees in fee units to match total fee revenue with total costs of juries over the next ten years;** and
3. **To set jury fees as a combination of fee units and a component that would refer to the gazetted notice that sets juror payments.**

The Department explains that Option 3 is the preferred option, as fee revenue would increase in line with juror payments, the largest component of costs. This will ensure fees recover a consistent proportion of court costs over time. Under both Options 1 and 2, if juror payments were not increased then fee revenue would grow faster than costs, leading to cost recovery increasing over time.

### **Implementation and Evaluation**

In the RIS, the Department indicates that the proposed Regulations should be relatively straightforward to implement. When the proposed Regulations commence, the courts will need to update published information about fee

amounts. The introduction of new fee categories in the Magistrates' Court will also require the Court to set up a new system to determine which fee category a party falls under. The system currently used at VCAT, the County Court and the Supreme Court will be used. Introducing this system would require:

- updating online information systems, hard copy forms and brochures;
- updating the online portal used for filing court documents and the Court's case management systems;
- producing a communications plan for courts and users;
- providing information for magistrates', registrars and court staff about the new fee structure; and
- training for relevant staff about the new fee waiver categories.

The Department notes in the RIS that evaluation of the proposed Magistrates' Court (Fees) Regulations will include a mid-term review, given they are projected to raise about \$32 million in fees per year. The Department will be responsible for the mid-term review. It is expected to take at least six months, to allow sufficient time for stakeholder consultation, data collection and analysis, and will be completed by September 2027.

- Evaluation will also involve ongoing monitoring of the Regulations. The mid-term review will draw on information from early monitoring to determine the extent to which the objectives of the fees have been achieved;
- draw on feedback from Magistrates' Court users on the new fee structure;
- review cost structures to account for any further changes to court activities and identify opportunities to improve the fee structure prior to the expiry of the regulations in 2032; and
- identify opportunities, risks and issues that should be considered on a regular basis. The Department explains that the evaluation would take account of other factors affecting court operations such as changes to jurisdiction of the Magistrates' Court, changes to the role of other dispute resolution bodies or other factors that could impact the Court's workload.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation